ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(1)(A)	)	CC Docket No. 96-187
of the Telecommunications Act of 1996	)	
	)	

COMMENTS OF PACIFIC TELESIS GROUP

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SUMMARY

In order to meet Congress's tariff streamlining goals in §204(a)(3), the Commission must recognize the "sweeping changes" made by Congress and its "pro-competitive, deregulatory goals." When Congress said in §204(a)(3) that tariffs filed on a streamlined basis "shall be deemed lawful," it meant what it said and substantially changed the treatment of LEC tariff filings. Congress changed the LECs' substantive rights by having their tariffs treated in all respects as lawful from the time of filing until such time as the Commission makes a contrary finding, and the burden of proof is on any party, including the Commission itself, challenging the tariff. No longer are LECs to have the burden of defending their tariffed rates under the threat of retroactive penalties. This change more closely replicates the free marketplace, where prices are not controlled and competitors cannot game a regulatory process to create uncertainty.

Similarly, when Congress said in §204(a)(3) that a LEC may file "a new or revised charge, classification, regulation, or practice on a streamlined basis," it meant what it said. The LEC may file any tariff change for a new or existing service on a streamlined basis. Excluding tariffs that do not change rates or that are for new services would be contrary to both the plain meaning of the section and Congress's "pro-competitive, deregulatory" intent. These exclusions would leave LECs at a competitive disadvantage and reduce the benefits that competition can bring to consumers.

Finally, when Congress in §204(a)(3) said "streamlined," it meant it. Some of the *NPRM's* suggestions or proposals are consistent with streamlining and should be adopted. The Commission should:

1) provide for the electronic filing of tariffs;

2) provide e-mail notice to interested parties when any tariff is filed;

3) provide a public comment period during the 7 or 15 days notice period, allowing 3 days for petitions, followed by 2 days for replies, with petitions hand delivered or faxed;

4) reform the Rules to permit more expeditious termination of tariff investigations; and

5) change the existing Rules to reflect the new notice periods.

The Commission should reject NPRM proposals and suggestions that conflict with streamlining. The Commission should:

1) not establish a policy of relying exclusively on post-effective review of tariffs to assure compliance with Title II, rather than pre-effective review;

2) not require, in any pre-effective tariff review, more detailed summaries of proposed tariff revisions than are currently required;

3) not require an additional analysis showing that the tariffs are lawful under applicable rules;

4) not create presumptions of unlawfulness for narrow categories of tariffs;

5) not apply the 15 day notice period, instead of the 7 day period, for tariff transmittals that contain both rate increases and decreases;

6) not exclude a public comment period during the 7 or 15 days notice period;

7) not require price cap LECs to file a partial TRP prior to the filing of their annual tariff revisions; and

8) not establish blanket time periods for pleading cycles and page limits for pleadings in tariff investigations.

In sum, the Commission should implement §204(a)(3) consistent with the plain meaning of its words and Congress's "sweeping changes" and "deregulatory" policies that are aimed at increasing competition for the benefit of all Americans.

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Pacific Telesis Group ("PTG") hereby respectfully submits these Comments in the above-captioned proceeding.

I. Introduction

In the Notice of Proposed Rulemaking ("*NPRM*"), the Commission acknowledges that the "Telecommunications Act of 1996" makes "sweeping changes affecting all consumers and telecommunications service providers" in order "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[1] Although the focus of this rulemaking is on the regulatory requirements needed to implement the §204(a)(3) provisions for

[1] *NPRM* ¶1 (quoting Conference Report) emphasis added). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). Section references herein generally are to 47 United States Code.

streamlined LEC tariff filings, we urge the Commission to keep in mind that the ultimate goal of the Act -- the clear and unequivocal public policy -- is competition, not regulation.

In order to ensure competition, Congress carefully balanced the provisions of the 1996 Act. Section 251 ensures that the incumbent LECs' networks are open and that other telecommunications carriers may fully compete with LECs. At the same time, §204(a)(3) provides streamlined relief for LEC tariff filings, so that LECs can have a better chance to compete with other telecommunications carriers, who already have more streamlined procedures. In order to maintain this balance, the Commission should focus on the "pro-competitive, deregulatory" goals of the 1996 Act. Where §204(a)(3) is clear on the nature of streamlined regulation, the Commission should not impose more onerous requirements, but should establish new procedures that support streamlining (e.g., electronic tariff filings). Where there are ambiguities in the section, they should be resolved in favor of less regulation and more competition.

II. The Phrase "Deemed Lawful" Creates A Determination Of Lawfulness At The Time Of Filing (¶¶ 5-15)

Section 204(a)(3) of the 1996 Act provides that tariffs filed on a streamlined basis shall be "deemed lawful." This requirement means exactly what it says: The tariff is lawful when it is filed and continues to be lawful until a contrary finding is made by the Commission. The burden of proof must lie with any party, including the Commission, to make a finding that the tariff is no longer lawful. This determination and burden of proof apply in making any pre-effective decision to suspend and investigate the tariff under §204, as well as in any post-effective investigation under §205 or in any complaint proceeding under §208(a). The same

would apply when any tariff is reviewed pursuant to a complaint filed under §§260(b), 274(e), or 275(c). Also, the Commission is precluded from awarding damages for the period the streamlined tariff is in effect prior to a determination that it is unlawful.

The Commission tentatively concludes that Congress intended to change the current treatment of LEC tariff filings. We fully agree. The intended change is not merely to be one of timing, but is also to change the carriers' substantive rights to have their tariffs treated in all respects as lawful until the Commission makes a contrary finding. Currently, rates which become effective absent suspension or investigation by the Commission establish only the legal rate, not the lawful rate.[2] However, Congress' requirement in §204(a)(3) that any tariff shall be "deemed lawful" followed by the phrase "*and* shall be effective" clearly establishes that tariffs are to be treated as lawful when they are filed and, if not suspended or investigated by the Commission in the 7-day or 15-day period, become both lawful *and* effective. In determining Congressional intent, the general starting point is the text of the statute.[3] When the text of the statute is clear, no further inquiry is required.[4] The language "shall be deemed lawful" expressly mandates that a filed tariff be treated, by operation of law, as lawful at the time of filing. The next phrase "and shall be effective" states a separate requirement regarding the time within which the tariff applies. Any consideration by the Commission of the tariff, even in the pre-effective period, must recognize this lawful status.

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[2] *Arizona Grocery Co. v. Atchison, T. & S.F. Ry.*, 284 U.S. 370, 384 (1932) (stating that although the Interstate Commerce Act created the legal rate, it did not establish the lawfulness of the rate).

[3] *United States v. Gunderson*, 114 S. Ct. 1259, 1277 (1994).

[4] *Fogerty v. Fantasy*, 114 S. Ct. 1023, 1035 (1994); *see also United States Nat'l Bank of Or. v. Independent Ins. Agents of Am.*, 508 U.S. 439, 454 (1993) (stating "a statute's plain meaning must be enforced.").

The phrase "deemed lawful" creates a determination of lawfulness. A correct interpretation of the term "deemed" is necessary to reach this conclusion. Under basic principles of statutory interpretation, undefined terms in a statute have their ordinarily understood meaning.[5] In determining the ordinary meaning of terms, dictionaries are an appropriate source.[6] Black's Law Dictionary defines "deem" as "to hold; consider; adjudge; believe; condemn; determine; treat as if; construe."[7] Thus, substituting these definitions for "deemed", the effective rates would be "considered lawful", "determined lawful", "treated as if lawful" or "construed lawful." Legislative intent is expressed by the common meaning of the terms used.[8] As such, it is clear that Congress intended for "deemed lawful" to have its plain meaning. Consequently, rates which are "deemed lawful" are rates which are determined and considered lawful. It is helpful to consider Congress's use of the word "deemed" elsewhere in the Communications Act. In virtually every case, "deemed" is used when Congress intends that a fact or legal conclusion shall be determined to be the case by operation of law.[9] Indeed, the very existence of this Commission turns on the word "deemed." Section 707 of the Act specifies, "The Commission shall be *deemed* to be organized upon such date as four members of the Commission have taken office.[10]

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[5] *Koyo Seiko Co. v. United States*, 36 F.3d 1565 (Fed. Cir. 1994).

[6] *Board of Educ. v. Mergens*, 496 U.S. 226, 237 (1990).

[7] BLACK'S LAW DICTIONARY 374 (5th ed. 1981).

[8] *United States v. James*, 478 U.S. 597, 604 (1986) (stating, "We assume that the legislative purpose is expressed by the ordinary meaning of the words used.").

[9] *See, e.g.*, 47 U.S.C. §§153(10) ("a person engaged in radio broadcasting shall not...be deemed a common carrier"); 160(c) ("Any such petition [for forbearance] shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements"); *see also* 47 U.S.C. §§154(g)(3)(C), 205(b), 217, 220(c), 220(e), 251(h)(1)(B)(i), 252(e)(4), 273(b)(6), 311(c)(4), 311(d)(4), 315(a), 336(b)(3), 396(d)(2), 398(a), 415(e), 415(g), 503(b)(6), 537, 543(f), 553(b)(3), 556(c), 558, 605(e)(4), 607, 714(b), 717(j), 721(b)(2), 741.

[10] 47 U.S.C. §607 (emphasis added).

There are several implications that flow from a correct interpretation of the "deemed lawful" requirement. First, the Commission's decision not to suspend or investigate a tariff in the pre-effective period leaves in effect the determination created by the statute and creates a presumption of continuing lawfulness unless the Commission makes a post-effective finding to the contrary in a complaint proceeding. Thus, the burden of proof would be on any complainant to overcome this presumption of lawfulness in a complaint proceeding, even if that complaint proceeding is expedited under §§260(b) or 275(c). Similarly, a Commission decision to suspend and investigate a tariff does not disturb the presumption of lawfulness, which would apply during the course of the investigation and would require the burden of proof to be on any party who challenges the tariff. The "deemed lawful" requirement for streamlined tariffs is more specific and later enacted, and thus it overrides the general burden of proof in §204(a)(1).

Second, Congress obviously did not expect the Commission to engage in a detailed review of tariff filings during the 7-day or 15-day pre-effective period. In the competitive environment created by the 1996 Act, it will be infrequent that a challenge to a LEC tariff will raise a substantial question of law or fact. Competition will ensure that rates are reasonable. Frivolous challenges can easily be reviewed and denied within the 7-day or 15-day period. If the tariff is challenged on substantial grounds, a 7-day or 15-day period is clearly an insufficient time frame for the Commission to compile a complete record, review the record, and render a reasoned decision as to the continuing lawfulness of a filed tariff. Because the determination of lawfulness applies from the time of filing, however, there is no need for this detailed pre-effective review. Consistent with Congress's procompetitive, deregulatory policies,

there is a strong presumption of continuing lawfulness. Parties may challenge and try to overcome this presumption via a post-effective complaint.

Nor did Congress intend that the Commission would use its suspension and investigation authority as a means to evade the normal 7-day or 15-day effective periods. Instead, the Commission must recognize that it is only practical, in the new framework established by Congress, to engage in a limited and expedited pre-effective review of tariffs to determine if there is a prima facie issue of unlawfulness that overcomes the presumption of continuing lawfulness and that would justify suspension and investigation.[11] For example, price cap limits, pricing bands, and other pricing limitations established by the Commission are tantamount to a declaration by the Commission of the range of rates a LEC can charge for its services without raising any prima facie issues.[12] Rate filings within these established ranges, or that are unchallenged, or that are challenged on insubstantial grounds do not require extensive pre-effective or post-effective review by the Commission.

Third, the Commission is precluded from awarding damages for the period a streamlined tariff is in effect prior to a post-effective finding of unlawfulness. Congress mandated in §204(a)(3) that any rate filed on a streamlined basis "shall be deemed lawful." Tariff rates deemed lawful should be treated in the same manner as tariffs found lawful after

[11]Under the current tariff filing regulations for dominant LECs, tariffs within the no-suspension zone are presumed lawful after only limited review and become effective on only 14 days notice. Under these non-streamlined procedures, only a limited review is conducted and the Commission is given 14 days. *Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd 2637, 2643 (1991). Under the streamlined procedures at issue here, the 7-day period would clearly be insufficient for the Commission to make a conclusive determination as to whether a rate will continue to be lawful. So in order to foster rapid tariff implementation, unchallenged rates in the pre-effective period must continue to be construed as lawful rates.

[12]See 47 C.F.R. §§61.44, 61.45, 61.46 and 61.47.

investigation. The Commission could not retroactively penalize a carrier for charging a rate the Commission determined was lawful. In the same manner, the Commission should not penalize a carrier for charging a rate which is considered lawful via §204(a)(3).

For purposes of reparations, a tariff deemed lawful is equivalent to a tariff found lawful after full investigation by the Commission. Under prior law, when the Commission declined to suspend or investigate a filed tariff in the pre-effective period, it conceded that at the effective date the tariff complied with Commission regulations, did not raise substantial questions of law and fact, and did not pose a substantial risk that ratepayers or competitors would be harmed if the rate took effect. Thus, the rate was presumed reasonable.[13] Under the new law, these consequences flow from the "deemed lawful" requirement rather than from the Commission's decision not to suspend. Moreover, rates deemed lawful under §204(a)(3) fall within the ambit of *Arizona* which held that once an agency determines that a rate is reasonable, the agency cannot subject a carrier to reparations if it later determines that the rate is unreasonable.[14]

These consequences of the "deemed lawful" requirement are fully in accord with the Act's pro-competitive, deregulatory goals. In the competitive environment created by the 1996 Act for LEC services, the marketplace—not regulation—will be the main force determining the reasonableness of rates. The determination of lawfulness enacted by Congress reflects this reliance on market forces. Also, a regime in which it is procedurally challenging to change a rate by regulatory action is appropriate. This regime more closely models the free marketplace,

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[13] *Las Cruces TV Cable v. F.C.C.*, 645 F.2d 1041, 1044 n.6 (D.C. Cir. 1981) (stating "A 'lawful' rate is a legal rate that the regulatory agency has upheld as valid.").

[14] *Arizona*, 284 U.S. at 388-389.

where prices are not controlled and competitors cannot use a regulatory system to create uncertainty. Customers and suppliers are able to do business with the assurance that the prices and terms that govern their relations are unlikely to be changed by government action. This is necessary for rational and efficient business planning. The new Act injects a greater degree of such certainty into the relations between LECs and their customers. The Commission should do nothing to disturb this new policy.

III. All LEC Tariff Filings Are Eligible For Filing On A Streamlined Basis (¶¶ 16-19)

A. All LEC Tariff Filings That Involve Changes In Existing Service Offerings Are Eligible For Streamlined Treatment (¶¶ 16-17)

The Commission is correct in its tentative conclusion that "all LEC tariff filings that involve changes to the rates, terms and conditions of existing service offerings are eligible for streamlined treatment." *NPRM*, para. 17. The first sentence of §204(a)(3) states that LECs may file "a new or revised charge, classification, regulation, or practice on a streamlined basis." The second sentence states that "[a]ny such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed...."

The first sentence of §204(a)(3) is not limited in any way. The second sentence does not limit the first, but sets forth specific effective dates for tariffs with rate decreases or rate increases. The two sentences are not in conflict, and thus the first cannot be limited based on the second. This limitation would be contrary to the well-established rule of statutory construction

that every legislative provision is presumed to have independent meaning and effect.[15] In addition, Congress made it clear that it intended to streamline more than just rate changes, by including "classification, regulation, or practice." It would not make sense to streamline the tariff process for classifications, regulations, or practices when rates are being changed, but not when rates are staying the same. This limitation on streamlining would be contrary to Congress's unqualified intent, as expressed in the Conference Agreement (p. 186), to "address[] regulatory relief that streamlines the procedures for revision by local exchange carriers of charges, classifications and practices under section 204 of the Communications Act."

The Commission should apply the 7 day effective date of section 204(a)(3) to revisions in classifications, regulations, or practices. Only rate increases are designated for 15 day treatment. To be consistent with Congress's "pro-competitive, deregulatory goals," the Commission should treat other revisions the same as rate decreases. This treatment is needed in order to be consistent with Congress's goal to decrease regulation. Price cap LECs currently operate under a 14 day effective date for any revisions that do not take rates above the cap or outside the bands. Thus, tariff revisions that do not affect charges currently have a 14 day effective date. Applying a 15 day effective date under §204(a)(3) for these tariff revisions would be a step backward, away from streamlining, contrary to Congress's intent.

[15] *See, e.g., National Insulation Transportation Committee v. ICC*, 683 F. 2nd 533, 537 (D.C. Cir. 1982) ("court must, if possible, give effect to every phrase of a statute so that no part is rendered superfluous").

B. LEC Tariffs For New Services Are Eligible For Filing On A Streamlined Basis (¶18)

The Commission requests comments "on whether Section 204(a)(3) applies to new or revised charges associated with existing services, but not to charges associated with new services." *NPRM*, para. 18. Section 204(a)(3) states that a LEC may file "a new or revised charge...on a streamlined basis." (emphasis added)

This language applies to charges associated with new services. This is clear not only from the plain meaning of the terms, but also from Congress's use of the same terms in other parts of §204(a).

A charge for a service that never existed before is obviously a "new charge." That is the way Congress applied the term. Section 204(a)(3) applies to "a new or revised charge...," which becomes effective "unless the Commission takes action under paragraph (1)" before the effective date. Paragraph (1) of §204(a) concerns hearings on "any new or revised charge...," which is the same language used in paragraph (3) of §204(a). In the middle of paragraph (1), however, Congress made clear that this language applies to "a proposed charge for a new service or a revised charge" and to "such charge for a new service or revised charges." (emphasis added) At the end of paragraph (1), Congress went back to using the short form by discussing "a new or revised charge." Congress simply continued with this short form, "a new or revised charge," in paragraph (3), when it discussed the same charges as in paragraph (1), which expressly include charges for new services.

Given both the plain meaning of the terms and Congress's use of the terms in the other part of the section, if Congress had meant to exclude new services from §204(a)(3), it would have said so. Moreover, excluding new services would be in conflict with Congress's

"pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans...." *NPRM*, para. 1. This language clearly shows Congress's intent to help bring new services to market, and streamlining tariffs for new services is one of the ways that Congress chose to help meet this goal.

Congress intended that the 1996 Act "open all telecommunications markets to competition."[16] Congress ensured that LEC services will be fully competitive by carefully balancing provisions of the 1996 Act. Congress placed numerous requirements on incumbent LECs for allowing other telecommunications carriers to interconnect their networks and to access unbundled network elements, in sections 251 and 252. Congress then streamlined tariff requirements for LECs in section 204(a)(3). If the Commission does not implement this latter section as Congress intended, by allowing streamlining of all LEC tariffs including new services, Congress's careful balance will be destroyed. Other telecommunications carriers will be able to fully compete with the LECs, but the LECs will be held back, by tariff delays and inefficiencies, from fully competing with them.

The Commission states that excluding new services from section 204(a)(3) "may be preferable, to the extent permissible under the statute, as a matter of policy because it would permit the Commission and interested parties a fuller opportunity to review tariff changes that are more likely to raise sensitive pricing issues...." *NPRM*, para. 18. Not only is it impermissible under the statute, but excluding new services would be very poor public policy. The Commission has found that streamlined filing requirements can "serve the public interest by

[16] Conference Report, p. 1.

promoting price competition, fostering service innovation, encouraging new entry into various segments of telecommunications markets, and enabling firms to respond quickly to market trends."[17] The Commission stated this in the context of "nondominant" carriers, but it is true for any competitor and is particularly true concerning new services. As Alfred E. Kahn and Timothy J. Tardiff stated in connection with the Price Cap Proceeding, the introduction of new services is "fundamentally a competitive rather than a monopolistic phenomenon.... To deny an innovator the rewards of being first would inhibit innovation; and it should not matter for these purposes whether the innovator is a telephone company or a new entrant."[18] Therefore, the Commission should not add requirements for a "fuller opportunity of review" of new services. That not only would cause delay in getting the particular new services to consumers, a serious problem in itself, but would inhibit innovation in general by denying the LEC innovator "the rewards of being first."

The *NPRM's* statement that "[c]harges for new services have often been treated by the Commission differently than new or revised charges for existing services" is irrelevant under the 1996 Act, and continuation of that type of treatment would frustrate the goals of the Act. Chairman Reed Hundt recognized the dramatic changes brought by the 1996 Act in his

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[17] *Tariff Filing Requirements For Nondominant Common Carriers,* CC Docket No.-93-36, *Order*, 78 RR 2d 1722, para. 4 (1995) ("*Nondominant Tariff Order*").

[18] Changes In Interstate Price Regulation: An Economic Evaluation Of The Pacific Bell And Nevada Bell Proposal, Alfred E. Kahn and Timothy J. Tardiff, December 11, 1995, Attachment 1, Comments of Pacific Bell and Nevada Bell, CC Docket No. 94-1, December 11, 1995.

recent speech, "Competition: Walking the Walk and Talking the Talk."[19] Chairman Hundt stated:

> We should also see telcos moving even more quickly into delivering big bandwidth -- by ISDN or ADSL or wireless solutions. Indeed, any State that firmly follows our interconnection order should also consider deregulating enhanced telecom services. Is it necessary for Maryland to fix the price of ISDN so that Bell Atlantic cannot raise or even lower its prices without a lengthy approval process? Under our interconnection order, isn't there enough potential for entry to trust that the market will keep ISDN at a reasonable price? After all, you can hardly argue either that regulation has effectively promoted this long-overdue service or that ISDN is a basic commodity that should be priced by rule at affordable levels. Why not give deregulation of ISDN a chance?

This advice for ISDN and for the States is certainly applicable to new interstate access services and the FCC. The Commission is not yet at the point of deregulating, but it should be at the point of removing regulations beyond those established by Congress, in order to allow new benefits for consumers as rapidly and efficiently as possible.

In applying section 204(a)(3), the Commission should treat new services the same as a reduction in rates and apply the 7 day effective date. New services, like rate reductions, provide direct benefits to customers. New services must provide more efficient or otherwise more beneficial ways of communicating, or no one will purchase them. The sooner new services get into the market, the sooner consumers will benefit. Applying the 7 day effective date, rather than 14 days, is consistent with removing regulations in order to meet Congress's "pro-competitive, deregulatory goals."

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[19] Walking the Walk and Talking the Talk, p. 4, September 17, 1996, Chairman Reed Hundt, Alex. Brown & Co., "Media & Communications '96 Conference."

C. *Section 204(A)(3) Does Not Preclude The Commission From Establishing Permissive Detariffing (¶ 19)*

The Commission requests comments on its tentative conclusion that Section 204(a)(3) does not preclude it from exercising its forbearance authority under Section 10(a) of the 1996 Act.[20] This conclusion is correct. Section 10(a) states that "the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets," if three conditions are met. The conditions for forbearance are if the Commission determines that -- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest." (emphasis added)

This forbearance clearly applies to §204(a)(3) since forbearance applies to "any regulation or any provision of this Act." Moreover, Congress used the same terms in §204(a)(3) as those in section 10(a) that are underlined above. In addition, if the conditions quoted above are met, there is no purpose to requiring tariffs. As indicated in the quote from Chairman Hundt in Section B above, at least some incumbent LEC services are reaching the point where tariffs are no longer needed in order to ensure reasonable and nondiscriminatory rates (condition number (1) above). There still are reasons , however, to permit tariffing. Mandatory detariffing would

[20] 47 U.S.C. §160(a).

not meet condition number (3) above. The public interest will benefit if carriers have the flexibility to offer services by tariff where that is the most efficient means of providing service.[21]

In order to support Congress's "pro-competitive, deregulatory goals," whatever forbearance the Commission applies concerning §204(a)(3) should apply to all LECs equally. Congress did not distinguish between types of LECs in this section, as it did in some other sections of the 1996 Act, and neither should the Commission. Asymmetrical tariff treatment of LECs prevents fair competition and reduces the benefits that competition can bring to consumers.

Section 251 applies some requirements to all LECs and others only to incumbent LECs. The §251 requirements on the incumbent LECs, such as providing access to unbundled network elements, ensure full competition and make incumbent LECs prime candidates for permissive forbearance, consistent with Chairman Hundt's remarks quoted in Section B above.

IV. The Commission Should Streamline The Administration Of LEC Tariffs As Intended By Congress And Not Establish More Burdensome Requirements (¶¶ 20-34)

A. The Commission Should Encourage The Electronic Filing Of Tariffs (¶¶21-22)

The Commission proposes to require that carriers file tariffs, tariff transmittal letters, and tariff support electronically. The Commission envisions providing access to tariffs and the related documents by means of dial-up access or through the Internet. The Commission "also contemplates that [its] electronic filing system would permit parties to file petitions, and responsive pleadings, electronically." *NPRM*, paras. 21-22. We applaud the Commission's

[21] We described many of these situations in our comments in CC Docket No. 96-61 in support of permissive detariffing for interstate interLATA services. Comments of Pacific Telesis Group, April 25, 1996, pp. 5-9, *Policy and Rules Concerning the Interstate Interexchange Marketplace*, CC Docket No. 96-61.

desire to use new and advanced technology to help streamline the tariff process. We support use of a web site and the Internet for this purpose. This option would take full advantage of the speed and accuracy offered by state-of-the-art electronic media, allow immediate and widespread public access to tariffs and support documents, and create lower costs and less environmental waste than distribution via paper.

At this time, the Commission should not adopt a firm in-service date for electronic filing, but should establish a trial period to work with the LECs toward electronic filing via the Internet. This trial period will give both the Commission and the LECs time to work through and resolve technical problems associated with the transition to electronic filing. We believe that after this initial trial period, the Commission and the LECs will be prepared to implement electronic filing and take advantage of the many benefits it offers.[22]

We recommend that each carrier maintain its own tariff-content directory and, via the Internet, upload its tariffs to the Commission's or its agent's web server. The Commission should allow carriers to retain their existing word processing programs and tariff formats. There is no need for stringent uniformity in programs or page layouts, provided that all pages, including graphics, are coded prior to uploading in a standard mark-up language designated by the Commission for display over the Internet. Uploaded information would need to be securely posted so that no other party could override or alter it. The Commission should maintain an official stamped paper copy in addition to the electronically-filed copy in case of technical failure. Only public information should be made available generally over the Internet. If the

[22] The Commission should allow flexibility in the means of providing information for distribution over the Internet. For example, a diagram or other non-text information that lacked an electronic image version could be scanned, turned into an image, and uploaded with the text of the tariff.

Commission is flexible and patient in its implementation of electronic filings, we believe that this approach will help streamline the tariff process and benefit the public.

B. *The Commission Should Not Rely Exclusively On Post-Effective Tariff Review (¶¶ 23-24)*

The Commission requests comments on whether it should rely exclusively on post-effective tariff review in which it would determine whether it is necessary to initiate a tariff investigation pursuant to §205 of the Act. *NPRM*, para. 23. The Commission should not adopt this approach. Most important, the Commission should not assume that it will more than infrequently need to conduct post-effective review of LEC tariffs. Congress deemed LEC tariffs lawful from the time of filing, because it expected that marketplace competition, which is ensured by the 1996 Act, will keep LEC rates reasonable. If the LEC charges too much, it will lose business to competitors. If the LEC charges too little, it will lose revenues. The need for tariff review is rapidly declining, and Congress recognized that in §204(a)(3). We described the streamlined tariff review process above, in Part II of these Comments. In §204(a)(3), Congress recognized that the Commission may conduct pre-effective tariff review and may suspend and investigate the tariff. The Commission should rarely, if ever, pursue post-effective review under §205 or §403. Even before Congress had deemed LEC tariffs lawful, the Commission stated that, "[w]hen a Section 208 [complaint] proceeding is available to a petitioner seeking action after a tariff has taken effect, we will not be inclined to exercise our discretion in favor of initiating a proceeding under other statutory sections [*i.e.*, §205 or §403]."[23] Now that Congress

[23] Teleport Communications Group Operating Companies, tariff FCC No. 1, Transmittal No. 1, 8 FCC Rcd 3611, 3612 (1993).

has streamlined LEC tariff filings and deemed them lawful, the Commission should be even more reluctant to initiate post-effective review.

C. *Section 204(a)(3) Requires That The Commission Streamline Pre-Effective Tariff Review, Not Add Requirements (¶¶ 25-29)*

1. *The Commission Should Not Require More Detailed Summaries And Legal Analysis Of Tariff Filings (¶ 25)*

The *NPRM* proposes to require "that LECs file summaries of the proposed tariff revisions with their tariff filings that provide a more complete description than under current requirements," including a description of how proposed changes differ from current terms and conditions and the expected impact on customers. In addition, the Commission proposes to require that LECs include with their streamlined tariffs "an analysis showing that they are lawful under applicable rules." *NPRM*, para. 25.

The Commission should reject these proposals. It is illogical and contrary to the 1996 Act to add more regulatory requirements as a supposed means of streamlining. Congress streamlined LEC tariffs because with competition there is less need for review and because detailed review stands in the way of competition. As the Commission recognized with nondominant carriers, streamlined filing requirements, "serve the public interest by promoting price competition, fostering service innovation, encouraging new entry into various segments of telecommunications markets, and enabling firms to respond quickly to market trends."[24] The Commission should not try to jam more regulation into a shorter period of time; it should decrease regulation altogether. The description and justification that LECs currently provide are

[24] *Nondominant Tariff Order* at para. 4.

more than enough.[25] Consistent with §204(a)(3), the Commission should be looking for ways to streamline tariff filings, not add to them.

For the same reasons, The Commission should not require additional analysis of the lawfulness of the tariffs. Price cap LECs submit a Tariff Review Plan ("TRP") with workpapers that demonstrate compliance with the Part 61 Rules. No additional discussion is needed. Other telecommunications carriers against which the LECs compete file tariffs on one-day notice without any of the supporting data currently filed with LEC tariffs. Certainly, more requirements should not be placed on the LECs in the name of streamlining.

2. *The Commission Should Not Establish Presumptions Of Unlawfulness (¶ 25)*

The Commission solicits comments "on whether [it] may, consistent with the Act, and should, establish in [its] rules presumptions of unlawfulness for narrow categories of tariffs, such as tariffs facially not in compliance with [its] price cap rules, that would permit suspension and designation of issues for investigation through abbreviated orders or public notices." *NPRM*, para. 25.

Presumptions of unlawfulness would be contrary to §204(a)(3). By deeming LEC tariffs lawful at the time of filing, Congress created a presumption of continuing lawfulness which puts the burden on the party challenging the tariff to overcome the presumption. With certain types of tariff filings, this presumption would be particularly difficult to overcome. For instance, rate reductions are in the public interest because they are good for customers and because the LEC has no incentive to predatorily price.[26] As another example, price increases

[25] 47 C.F.R. §61.33(b)(1).

[26] As the U.S. Supreme Court found, "[P]redatory pricing schemes are rarely tried, and even more rarely successful." Matsushita Electrical Industrial Co. v. Zenith Radio Corp., 475